

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**W.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST SERVICE,  
Philadelphia, PA, Employer**

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**Docket No. 17-0420  
Issued: June 8, 2017**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 16, 2016 appellant filed a timely appeal from a September 20, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision of April 16, 2014 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this claim.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Appellant submitted new evidence following the September 20, 2016 decision. As the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

### **FACTUAL HISTORY**

On February 15, 2014 appellant, then a 47-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on that date he sprained his right wrist when he slipped on black ice and fell down in the parking lot while in the performance of duty. He stopped work on February 15, 2014.

Appellant was initially treated in the emergency room on February 15, 2014 by Dr. Mark Goldstein, a Board-certified internist. In emergency room records, Dr. Goldstein diagnosed right wrist strain and acute knee pain. He noted that appellant had no restrictions.

An x-ray scan of the right wrist dated February 15, 2014 by Dr. Natalie Berman, a Board-certified diagnostic radiologist, showed suspected minimally displaced triquetral fracture, only seen on the lateral view. An x-ray scan of appellant's left knee by Dr. Martin A. Graber, a Board-certified radiologist, revealed no fracture and suspected minimal joint effusion.

Appellant submitted a signed request for authorization of medical treatment (Form CA-16), which noted a date of injury of February 15, 2014 and diagnoses of wrist sprain.

A nurse practitioner, treated appellant and related in examination reports dated February 19 and 26, 2014 that appellant had injured his right wrist and left knee when he slipped and fell on ice at work. She diagnosed possible right wrist fracture and left knee contusion. The nurse practitioner recommended that appellant not work. She provided duty status reports (Forms CA-17) dated February 19 and 26, 2014. In a February 26, 2014 attending physician's report (Form CA-20), the nurse practitioner related that appellant was totally disabled beginning February 15, 2014.

Appellant also received medical treatment from Dr. Mark Desmond, a Board-certified orthopedic surgeon. In a February 20, 2014 report, he related appellant's complaints of right hand and wrist pain following a slip and fall at work. Dr. Desmond provided examination findings of tenderness over the dorsal aspect of the proximal carpal row ulnarly and slight swelling. He diagnosed triquetral avulsion fracture of the right carpal bone. In a March 13, 2014 report, Dr. Desmond indicated that x-ray scans showed excellent alignment. He provided examination findings and diagnosed healing triquetral avulsion fracture and possible mild irritation of the superficial branch of the ulnar nerve secondary to his injury. In a March 31, 2014 report, Dr. Desmond authorized limited duty with lifting no more than 25 pounds.

By letter dated March 12, 2014, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. It afforded appellant 30 days to submit additional evidence.

Appellant resubmitted the February 19, 2014 report by the nurse practitioner and a March 14, 2014 Form CA-17, which indicated that appellant could work sedentary duty. He also submitted an April 11, 2014 follow-up examination report and work status note by the nurse practitioner, which indicated that appellant could return to full duty.

In a decision dated April 16, 2014, OWCP denied appellant's traumatic injury claim. It accepted that the February 15, 2014 incident occurred as alleged and that appellant had a

diagnosed medical condition, but denied appellant's claim because the medical evidence was insufficient to establish that his medical conditions were causally related to the accepted incident. OWCP determined that appellant failed to provide a medical report with rationalized medical opinion as to how the accepted employment incident caused or contributed to his medical conditions.

Following OWCP's April 16, 2014 decision, appellant resubmitted the February 15, 2014 x-ray scan reports and hospital records and Dr. Desmond's medical reports.

Appellant underwent occupational hand and physical therapy treatments and submitted various reports dated March 13 to May 5, 2014.

OWCP did not receive any correspondence or additional evidence from appellant from May 15, 2015 to August 29, 2016.

In an appeal request form dated July 23, 2016, postmarked on July 23, 2016, and received by OWCP's Branch of Hearings and Review on August 29, 2016, appellant requested a telephone hearing before an OWCP hearing representative.

By decisions dated September 13, 2016 and reissued on September 20, 2016, the Branch of Hearings and Review denied appellant's request for a telephone hearing as it was untimely filed. It found that the request was not postmarked within 30 days of the issuance of the April 16, 2014 OWCP merit decision. After exercising its discretion, the Branch of Hearings and Review further found that the issue in the case could be equally well addressed through the reconsideration process.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.<sup>3</sup> Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>4</sup> A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.<sup>5</sup> Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.<sup>6</sup> OWCP procedures require that it

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<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>5</sup> *Id.* at § 10.616(a).

<sup>6</sup> *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).<sup>7</sup>

### ANALYSIS

On April 16, 2014 OWCP denied appellant's traumatic injury claim finding that appellant had not established work-related right wrist and left knee injuries on February 15, 2014 causally related to the accepted employment incident. Appellant requested a telephone hearing in an appeal form dated and postmarked July 23, 2016 and received by OWCP on August 29, 2016. OWCP denied appellant's request for a telephone hearing by decisions dated September 13 and 20, 2016 because his request was untimely filed. The Board finds that OWCP properly determined that appellant's request for a telephone hearing was untimely as it was filed more than 30 days after the issuance of OWCP's April 16, 2014 merit decision. Because the postmark date was more than 30 days after the date of OWCP's April 16, 2014 decision, he was not entitled to a hearing as a matter of right.<sup>8</sup>

Although appellant's request for hearing before an OWCP hearing representative was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion.<sup>9</sup>

In its September 20, 2016 decision, OWCP properly considered the matter in relation to the issue involved and that additional evidence and argument could be submitted with a request for reconsideration. The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>10</sup> In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for a telephone hearing. Accordingly, the Board finds that OWCP properly denied appellant's request for a telephone hearing.

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<sup>7</sup> See *R.T.*, Docket No. 08-408 (issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.2(a) (October 2011).

<sup>8</sup> The 30-day period for determining the timeliness of an employee's request for an oral hearing or review commences the day after the issuance of OWCP's decision. See *Donna A. Christley*, 41 ECAB 90 (1989).

<sup>9</sup> *Supra* note 7.

<sup>10</sup> *Samuel R. Johnson*, 51 ECAB 612 (2000).

On appeal, appellant contends that he sustained a work-related injury on February 15, 2014 when he slipped and fell at work. As explained, however, the Board does not have jurisdiction to review the merits of the August 16, 2014 denial decision.<sup>11</sup>

Appellant may submit new evidence or argument as part of a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> The Board notes that a Form CA-16 authorization for medical treatment was issued by the employing establishment on February 15, 2014. If an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form. *See R.P.*, Docket No. 16-0498 (issued July 5, 2016); *Tracy P. Spillane*, 54 ECAB 608 (2003).